

Message Text

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PAGE 01 STATE 173617

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TO AMEMBASSY THE HAGUE

INFO USMISSION NATO

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E.O. 11652: N/A

TAGS: PGOV NATO NPG

SUBJECT: MC MAHON ACT AND US PARTICIPATION IN NATO NPG

REF: THE HAGUE 3009

1. EMBASSY QUERY RAISES SENSITIVE ISSUES. NEVERTHELESS, SPECIFIC QUESTION PARA 3 REFTEL ON MCMAHON ACT AND US PARTICIPATION ON NPG CONSULTATIONS IS RELATIVELY SIMPLE. TO BEGIN WITH, MCMAHON ACT (THE ATOMIC ENERGY ACT OF 1946) IS NO LONGER THE RELEVANT STATUTE BUT RATHER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.

2. THE ATOMIC ENERGY ACT DOES NOT SPECIFICALLY ADDRESS QUESTION OF US OR ANY OTHER NATO MEMBER PARTICIPATION IN LIMITED OFFICIAL USE

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PAGE 02 STATE 173617

NATO NPG. THE ACT DOES, HOWEVER, ESTABLISH STANDARDS AND

CRITERIA TO GOVERN THE COMMUNICATION OF NUCLEAR INFORMATION, E.G., RESTRICTED DATA AND FORMERLY RESTRICTED DATA (RD AND FRD) BY THE USG TO ANY FOREIGN COUNTRY OR REGIONAL DEFENSE ORGANIZATION TO WHICH THE UNITED STATES IS A PARTY, E.G., NATO. FOR EXAMPLE, THE RECIPIENT MUST INTER ALIA BE QTE PARTICIPATING WITH THE UNITED STATES PURSUANT TO AN INTERNATIONAL ARRANGEMENT BY SUBSTANTIAL AND MATERIAL CONTRIBUTIONS TO THE MUTUAL DEFENSE AND SECURITY UNQTE MOREOVER, THE

PRESIDENT MUST DETERMINE THAT THE PROPOSED TRANSFER OF RD AND FRD QTE WILL PROMOTE AND WILL NOT CONSTITUTE AN UNREASONABLE RISK TO THE COMMON DEFENSE AND SECURITY END QTE

3. THESE AND OTHER REQUIREMENTS OF THE ACT ARE REFLECTED IN BILATERAL AGREEMENTS WITH INDIVIDUAL NATO MEMBERS AND IN A MULTILATERAL NATO-WIDE AGREEMENT OF JUNE 18, 1964. THESE AGREEMENTS, AND THE ACT ITSELF, AFFECT USG PARTICIPATION IN THE NPG ONLY TO THE EXTENT THAT THAT PARTICIPATION MAY ENTAIL THE COMMUNICATION OF RD AND FRG TO NATO OR ITS MEMBER STATES. IN NO EVENT IS THE USG UNDER A LEGAL OBLIGATION TO COMMUNICATE RD AND FRD IN THE NPG OR ELSEWHERE. COMMUNICATIONS OF RD AND FRD IN EACH GIVEN CASE IS ESSENTIALLY A POLICY DECISION TAKEN WITHIN THE FRAMEWORK OF THE STANDARDS AND LIMITATIONS OF THE ATOMIC ENERGY ACT. ALTHOUGH POLICY DECISIONS MUST BE MADE IN CONTEXT OF EXISTING CIRCUMSTANCES, WE FORESEE NO SITUATION ARISING IN WHICH STANDARDS AND LIMITATIONS OF ATOMIC ENERGY ACT WOULD PREVENT THE USG, AS A MATTER OF LAW, FROM PARTICIPATING EFFECTIVELY IN NPG CONSULTATIONS.

4. YOU MAY DRAW UPON THE FOREGOING PARAGRAPHS IN RESPONDING TO THE NRC-HANDELSBLAD EDITOR. YOU SHOULD SEEK TO AVOID ANY DISCUSSION REGARDING RD AND FRD COMMUNICATION IN HYPOTHETICAL SITUATIONS, E.G., COMMUNIST PARTICIPATION IN ITALIAN GOVERNMENT. IF THE SUBJECT COMES UP, YOU SHOULD SAY ONLY THAT, AS IN THE PAST, THE USG WILL KEEP UNDER CONTINUOUS REVIEW POLICIES CONCERNING THE FURNISHING OF NUCLEAR-RELATED INFORMATION TO ITS ALLIES AND THAT ANY DECISIONS IN THIS REGARD COULD ONLY BE TAKEN IN LIGHT OF ALL THE FACTS AND CIRCUMSTANCES PREVAILING AT THAT TIME.

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PAGE 03 STATE 173617

5. FYI: EMBASSY WILL BEAR IN MIND THAT THE FACT THAT NUCLEAR WEAPONS MAY BE LOCATED IN ANY SPECIFIC COUNTRY, EXCEPT FRG, HAS MINIMUM CLASSIFICATION OF CONFIDENTIAL, FORMERLY RESTRICTED DATA, AND COULD NOT, OF COURSE, BE DIVULGED END FYI.

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